

# OFFICE OF THE ATTORNEY GENERAL



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Honorable James H. Rowell  
Acting Director  
Department of Finance  
11 South Union Street  
Montgomery, AL 36130

State Agencies - Docks  
Department - Finance Department  
- Municipalities - Contracts

1. The State of Alabama is authorized to enter into a local cooperation agreement with the federal government in connection with the Bayou La Batre channel widening, deepening, and extending project.

2. The State of Alabama is authorized to enter into a collateral agreement with local entities in connection with the Bayou La Batre project whereby they assume all duties, liabilities, and obligations of the non-federal sponsor under the Bayou La Batre local cooperation agreement except the payment of the State's \$6,000,000 share.

Dear Mr. Rowell:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION

What is the authority of the Finance Department, the State Docks Department, and/or the Governor's Office to execute the Bayou La Batre local cooperation agreement and to then enter into a collateral or subsequent agreement with the local entities wherein they assume all duties, liabilities, and obligations (except payment of the State's \$6,000,000 share) of the non-federal sponsor?

In a subsequent conversation, Lee Miller, General Counsel for the Department of Finance, indicated that "subsequent or collateral agreement" refers to the Bayou La Batre collateral agreement, which the Department of Finance has stated must be entered into prior to the execution of the LCA by the State. Secondly, this office understands "local entities" to refer to the City of Bayou La Batre, the Port Authority of Bayou La Batre, and/or Mobile County.

FACTS, LAW AND ANALYSIS

The answer to your question is that the State of Alabama, through the Finance Department, the State Docks Department, and/or the Governor's Office, has full authority to enter into such a local cooperation agreement and such a collateral agreement in connection with the Bayou La Batre project.

Act No. 89-799, page 1598, amends the Constitution of Alabama of 1901 to authorize the State to engage in the Bayou La Batre, Alabama, channel widening, deepening and extending project. This constitutional authorization specifically includes the fulfillment of the requirements of local contribution, participation and cooperation established by the federal government (encompassed in the "local cooperation agreement"). Act No. 89-799 provides in pertinent part:

"The legislature may by appropriate laws authorize the state to pay a portion of the capital costs of public facilities and works of internal improvement consisting of (a) fulfilling a portion of the requirements of local contribution, participation and

cooperation now or hereafter established by the United States in connection with the deepening, widening and extending of the existing Federal channel at Bayou La Batre, Alabama. . . ." [Act No. 89-799, at 1598-1599].

The bond act implementing the constitutional amendment, Act No. 90-599, page 1069, states at Section 8:

"Bond proceeds and investment income in an amount not exceeding six million dollars (\$6,000,000) are hereby appropriated for payment of sixty (60) percent of the non-federal share of the costs of the internal improvements by fulfilling the requirements of local contribution, participation and cooperation now or hereafter established by the United States in connection with the widening, deepening and extending of the existing federal channel at Bayou La Batre, Alabama." [Act No. 90-599, at 1074].

Therefore, under the Constitution of the State of Alabama and the statute enacted pursuant thereto, the State of Alabama is authorized to fulfill a portion of the requirements of local contribution, participation and cooperation established by the United States in connection with the Bayou La Batre project, so long as this does not entail payment of an amount greater than \$6,000,000.

As to the Bayou La Batre collateral agreement, the execution of such an agreement in which the local entities agree to assume all duties, liabilities, and obligations of the non-federal sponsor (excepting the payment of the State's \$6,000,000 share) does not violate the State's constitutional and statutory authorization, cited above, to engage in the Bayou La Batre project.

#### CONCLUSION

It is the opinion of this office that the State of Alabama, through the Finance Department, the State Docks Department, and/or the Governor's Office, is authorized to execute the

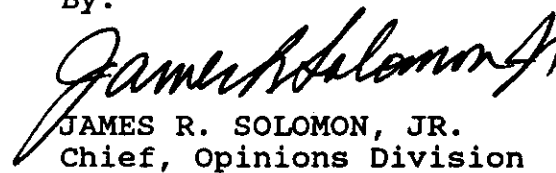
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Bayou La Batre local cooperation agreement and to enter into a collateral agreement with the local entities (the Port Authority of Bayou La Batre, the City of Bayou La Batre, and/or Mobile County) wherein they assume all duties, liabilities, and obligations of the non-federal sponsor, excepting payment of the State's \$6,000,000 share.

I hope this sufficiently answers your question. If this office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS  
Attorney General  
By:



JAMES R. SOLOMON, JR.  
Chief, Opinions Division

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